

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

InspectionXpert Corporation,	)	C/A No.: 1:19-cv-65
	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
L. Francis Cissna, Director, United States	)	
Citizenship and Immigration Services,	)	
	)	
Defendant.	)	
<hr style="width: 40%; margin-left: 0;"/>	)	

**COMPLAINT**

Plaintiff InspectionXpert Corporation (“IXC”) is a software company based in the research triangle that creates and publishes software for precision manufacturers. Because the software relates to technical drawings for engineers, manufacturers, and other technical professionals, IXC sought to hire a mechanical engineer with experience in software to provide mechanical engineering guidance, answers, and advice to its software developers. Specifically, IXC sought to hire a “Quality Engineer.” It identified an excellent candidate to fill the position. But the candidate would need a visa. IXC filed a petition on behalf of the employee for a visa under 8 U.S.C. § 1101(a)(15)(H)(1)(B). An H1B visa is available to workers who will fill jobs that require a college degree or its equivalent. Inexplicably, the Defendant—the agency charged with adjudicating such petitions—determined that a position that required a degree in mechanical engineering and experience in software did not require a college degree. Such absurd finding defies the Agency’s actual denial in this case that uses an “engineer” as an example of a position that qualifies for an H1B visa. For the reasons below, this Court should set aside the final agency action, order the Agency to grant the application, and award IXC attorney’s fees and costs.

## PARTIES

1. Plaintiff InspectionXpert Corporation (“IXC”) is incorporated under the laws of North Carolina with its principal place of business in North Carolina.
2. Defendant L. Francis Cissna is the Director of United States Citizenship and Immigration Services. He is in charge of all adjudications and processing for visas or status under 8 U.S.C. § 1101(a)(15)(H).

## JURISDICTION AND VENUE

3. This Court has jurisdiction over this case under 28 U.S.C. § 1331. *Califano v. Sanders*, 430 U.S. 99, 106 (1977). Under its federal question jurisdiction, this Court can hear claims under the Administrative Procedure Act (5 U.S.C. § 501, *et seq.*), and it has jurisdiction to provide declaratory relief under 28 U.S.C. § 2201.
4. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1)(A) because the Defendant does business in Durham County, North Carolina, at the United States Citizenship and Immigration Services’ Raleigh-Durham Field Office.
5. No statute or regulation requires an administrative appeal. Thus, Plaintiff has exhausted all administrative remedies or constructively exhausted all administrative remedies. *Darby v. Cisneros*, 509 U.S. 137 (1993).

## FACTS

6. IXC is a software company that creates tools for manufacturers to improve their quality inspection processes.
7. IXC’s software allows precision manufacturers to allow for paperless inspection processes and reports.
8. IXC holds a patent on its software.

9. IXC's customers are often engineers, designers, and other technical professionals.
10. In order to provide its team of software developers the perspective, guidance, and assistance of a mechanical engineer, IXC sought to hire a mechanical engineer with experience in software development.
11. IXC sought to hire an Quality Engineer.
12. The quality engineer would be required to use his knowledge of computer assisted drafting (commonly called "CAD") and mechanical engineering to develop, design, and execute software test plans, scenarios, and scripts for IXC's software to identify software problems and their causes.
13. The quality engineer would also be required to document and report defects to the software developers.
14. In other words, IXC sought a software professional that was also an engineer.
15. IXC found such an employee.
16. The employee, however, is a national of India.
17. As such, IXC would need to get permission from the United States Citizenship and Immigration Services ("the Agency") to employ him.
18. Visas under 8 U.S.C. § 1101(a)(15)(H)(1)(B) ("H1B Visas") are available for occupations that qualify as "specialty occupations."
19. Generally speaking, a specialty occupation is one that requires a bachelor's degree or equivalent experience. 8 U.S.C. § 1184(h).
20. Congress allocates only 65,000 H1B visas per year. However, congress allocates an additional 20,000 H1B visas if the employee has a master's degree or higher from a United States institution of higher education. 8 U.S.C. § 1184(g)(1).

21. For the last three years, employers have filed 232,973 H1B visa petitions (2015), 236,444 H1B Visa petitions (2016), and 198,460 H1B Visa petitions. Notice of Proposed Rulemaking, 83 Fed. Reg. 62406, 62422 (Dec. 3, 2018).
22. Because the Agency receives more petitions than visas available, it conducts a lottery to determine which petitions may be eligible for an H1B Visa. *Id.* at 62406-08.
23. Once a petition is “picked” in the lottery, the Agency reviews it for eligibility. *Id.*
24. The employer (or visa petitioner) must prove that the position is a specialty occupation by a mere preponderance of the evidence.
25. If the Agency grants the H1B visa petition, it accords three years of work authorization and immigration status to the beneficiary, which can be extended up to six years. 8 U.S.C. § 1184(g).
26. IXC filed a visa petition on behalf of its employee on April 2, 2018.
27. The Agency picked IXC’s visa petition in the lottery.
28. The Agency then requested additional information.
29. IXC timely responded.
30. The Agency denied IXC’s visa petition.
31. The Agency’s denial did not consider all of the evidence in the record; it limited its review to one job description. It ignored all other record evidence related to the duties and requirements of a quality engineer at IXC.
32. The Agency’s denial found that the position was not a specialty occupation because a quality *engineer*—a position requiring experience in software and a formal degree in mechanical engineering—did not require a college degree.
33. The Agency’s denial, in fact, did not even recognize the job title that IXC was proposing.

34. The Agency's denial creates new legislative rules without going through notice and comment rulemaking.

35. The Agency's denial is arbitrary and capricious.

FIRST CAUSE OF ACTION  
(Administrative Procedure Act)

36. IXC restates all of the allegations above as though restated here.

37. The Agency's denial is a final agency action. 5 U.S.C. § 702

38. The Agency's denial has aggrieved IXC.

39. The Agency's denial is arbitrary and capricious under 5 U.S.C. § 706(2)(A)-(F).

40. A final agency action is arbitrary and capricious if:

the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

*Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

41. The Agency's denial is arbitrary and capricious because it entirely failed to consider the fact that IXC sought a Wage Level II worker.

42. The Agency's denial is arbitrary and capricious because it entirely failed to consider the job title.

43. The Agency's denial is arbitrary and capricious because its explanation is contrary to the evidence that indicates the position required a degree in mechanical engineering.

44. The Agency's denial is arbitrary and capricious because it is so implausible that a position that requires knowledge of mechanical engineering does not require a college degree that the denial cannot be ascribed to a difference in view or agency expertise.

45. The agency's denial is without observance of procedure required by law because it is applying legislative rules that did not go through notice and comment rulemaking.
46. Finally, IXC reserves the right to add additional arguments why the Agency's denial is further violative of each provision of § 706(2) upon receipt of the certified administrative record.
47. This Court should set aside the Agency's denial with instructions to order the Agency to grant the petition.
48. The Agency's denial is substantially unjustified.
49. IXC qualifies for fees under the Equal Access to Judgment Act.

#### PRAYER FOR RELIEF

Plaintiff IXC requests the following relief

50. An order setting aside the Agency's denial;
51. A declaration stating that a Quality Engineer qualifies as a specialty occupation;
52. Attorneys' fees and costs under the Equal Access to Justice Act; and
53. Any other relief necessary for justice to be served.

January 14, 2019

Respectfully submitted,

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*via special appearance under LR 83.1(d)*

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